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Supreme Court of the United States.

OCTOBER TERM, 1952.

No. 701.

In the Matter

of

THE LEBLANC CORPORATION
(a Maryland Corporation),

and

THE LEBLANC CORPORATION
(a Louisiana Corporation),
Debtors.

CAPITOL MOTOR COURTS, DOWNTOWN REALTY COMPANY, GALVESTON BROADCASTING COMPANY, LAFAYETTE FRUIT COMPANY, L & H BROKERAGE COMPANY, MERCHANTS GROCERY COMPANY, MIDDLE GEORGIA BROADCASTING COMPANY, RADIO AUGUSTA, RADIO COLUMBIA, INC., RADIO COLUMBUS, INC., TERRE HAUTE REALTY COMPANY doing business as Terre Haute House, TEXAS BROADCASTERS, INC., TIMBERLAKE GROCERY CO. (Albany, Georgia), TIMBERLAKE GROCERY CO. (Thomasville, Georgia), TIMBERLAKE GROCERY CO. (Macon, Georgia), TRIBUNE PUBLISHING CO., WAPO BROADCASTING SERVICE, JAUBERT BROS. INC., I. S. McELHINEY doing business as New Orleans Envelope Co., COLUMBIA PAPER CO., and CULLMAN BROADCASTING CORP., Creditors,
Petitioners.

THE LEBLANC CORPORATION (a Maryland Corporation), and THE LEBLANC CORPORATION (a Louisiana Corporation), Debtors, MILTON F. ROSENTHAL, Trustee, and ALBERT HAILPARN, NELSON P. RABONE, ALBERT H. AHLERS, FRANK R. ATWELL, RICHARD P. PROWELL, MICHAEL HALPERIN, JOSEPH ECKHAUS and MORRIS W. PRIMOFF, constituting the Creditors' Committee,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

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with him on the petition.

THE COURT PRESS, N. Y. C.

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners Capitol Motor Courts et al., creditors of the LeBlanc Corporation pray that a writ of certiorari issue to review the judgment and decree

of the Court of Appeals for the Second Circuit affirming the judgment of the United States District Court for the Southern District of New York.

Opinions Below.

The opinion of the United States District Court for the Southern District of New York is unreported (R. 105-116). The opinion of the Court of Appeals (R. 131-138) is reported in *Capitol Motor Courts et al.* v. *LeBlanc Corp. et al.*, C. A. 2, 201 F. (2d) 356.

Jurisdiction.

The judgment of the Court of Appeals sought to be reviewed was entered January 12th, 1952 (R. 139-141). The jurisdiction of this Court is invoked under 28 U. S. C., § 1254(1).

Questions Presented.

1. Is chapter X or chapter XI of the bankruptcy statute the proper reorganization vehicle for a so-called parent corporation (of Maryland) with only three stockholders and an alleged subsidiary corporation (of Louisiana) with but one stockholder, where the parent corporation involves a cash investment of only $500 and has no secured creditors other than a finance company holding an account receivable pledge to support a loan and a federal tax claim secured by a lien?

2. Is chapter X the proper reorganization medium where there is no public ownership of stock, no

complicated corporate structure, no indenture trustee, no necessity for supervision by the Securities and Exchange Commission which has not appeared or participated in the proceeding?

3. Is New York City the proper forum for these proceedings where the parent corporation (in existence for 40 days) has no New York mailing address, no telephone, no office address except in care of an attorney, and all of the substantial assets of the corporation consisting of factory buildings, warehouses, offices, elaborate equipment, large inventory, 80 trucks or trailers, are located in Lafayette, Louisiana, 1500 miles away where all the business has been conducted for many years?

4. Is the claim of valid chapter X jurisdiction because of a parent-subsidiary relationship justified when it is founded on the transfer of stock of the subsidiary to the parent corporation three days before institution of the proceedings, as the district court surmises "for the purpose of reorganizing both corporations under chapter X in the same court" (R. 337)?

5. Must the reorganization proceedings of the parent corporation have some permanence or may the subsidiary corporation without notice to interested parties create an ostensible basis for chapter X jurisdiction by filing within a few hours of the institution of the original proceedings?

6. Is the institution of the proceedings in good faith by the parent corporation, since it arises from a transfer of stock flagrantly in violation of written agreements noted on the face of the stock?

7. Did the district court have jurisdiction in New York of the Maryland debtor, a corporation of 40 days duration within the meaning of § 128 which requires that the debtor shall have been in business "for the preceding six months or for a longer portion thereof . . ."?

Statutes Involved.

Section 128. If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction (11 U. S. C., § 528).

Section 129. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this Act or in the court which has approved the petition by or against its parent corporation (11 U. S. C., § 529).

Section 130. Every petition shall state— . . .

(7) the specific facts showing the need for relief under this chapter and why adequate relief cannot be obtained under chapter XI of this Act; . . . (11 U. S. C., § 530 (7)).

Section 118. The judge may transfer a proceeding under this chapter to a court of bankruptcy in any other district, regardless of the location of the principal assets of the debtor or its principal place of business, if the interests of the parties will be best served by such transfer (11 U. S. C., § 518).

Section 137. Prior to the first date set for the hearing provided in section 161 of this Act, an answer controverting the allegations of a petition by or against a debtor may be filed by any creditor or indenture trustee, or, if the debtor is not insolvent, by any stockholder of the debtor (11 U. S. C., § 537).

Section 146. Without limiting the generality of the meaning of the term "good faith," a petition shall be deemed not to be filed in good faith if— . . .

(2) adequate relief would be obtainable by a debtor's petition under the provisions of chapter XI of this Act; . . . (11 U. S. C., § 546(2)).

Section 147. A petition filed under this chapter improperly because adequate relief can be obtained by the debtor under chapter XI of this Act may, upon the application of the debtor, be amended to comply with the requirements of chapter XI for the filing of a debtor's petition, and shall thereafter for the purposes of chapter XI be deemed to have been originally filed thereunder (11 U. S. C., § 547).

Statement.

The Securities and Exchange Commission has not appeared or participated in these proceedings at any point.

An adequate statement of the case appears in the district court opinion (R. 105) and in an agreed statement of facts (R. 78). In the interest of brevity it will not be here repeated except to emphasize certain facts.

When the trustee was appointed in New York the only assets of which he could take possession were the minute book and stock ledger book of the parent corporation (fol. 234). This holding corporation had no books of account (fol. 251). To compensate attorneys for filing the proceedings $8,000 were transferred (fol. 284) the day before filing, from Lafayette, Louisiana where the bank account and all substantial assets were located.

Specifications of Error to Be Urged.

The United States Court of Appeals for the Second Circuit erred:

1. In condoning a practice whereby any corporation wherever situated in this country, even located on the west coast, with most substantial assets and legal questions of great complexity, by the simple maneuver of transferring its stock to a newly created corporation may encumber the busy New York courts 3,000 miles away with any manner of problems far removed from the situs of the assets and the small uninformed creditors who are usually helpless, disorganized and financially unable to protect their rights.

2. In holding that corporations of the simple type here involved embracing together only four stockholders and with no secured creditors are of the type which require the cumbersome relief of chapter X.

3. In failing to recognize that since there was no public ownership of stock or any complicated corporate structure involved that these corporations could obtain adequate relief under chapter XI.

4. In holding that these proceedings involved secured creditors of the type and character contemplated by the statute and the decisions.

5. In failing to hold that a finance company with an account receivable pledge to secure a loan and the government with a tax claim supported by a lien are not such secured creditors as are contemplated by the statute and which may be materially affected by the reorganization.

6. In holding that by transferring the stock of the Louisiana debtor corporation on September 29, 1951 to the alleged parent corporation, these proceedings can be justified by the institution thereof on October 2, 1951 on the ground that there is a true parent-subsidiary relationship.

7. In failing to give proper significance to the district court finding "that it seems probable that the decision not to dissolve the Louisiana debtor (the subsidiary) and to transfer its stock to the Maryland debtor was made for the purpose of reorganization of both corporations under Chapter X in the same Court".

8. In failing to find that the petitions were not filed in good faith since the corporations were brought into court on the pretext of a parent-subsidiary relationship by flagrantly invading the rights of the original selling stockholders for whose benefit a written contract had stipulated that the stock of the Louisiana debtor would not be transferred.

9. In failing to hold that a subsidiary corporation may not properly intervene in the main proceed-

ings until the proceedings have had some degree of permanence.

10. In approving the foisting of an alleged subsidiary corporation on the court to create an apparent case for chapter X jurisdiction by instituting the proceedings without notice to interested parties less than two hours after the parent corporation commenced the proceedings.

11. In failing to hold that the Maryland debtor since it was organized only 40 days before institution of the proceedings had not therefore been in business "for the preceding six months or for a longer portion thereof" as is by § 128 required.

12. In failing to give proper effect to the ruling of this Court in *Securities and Exchange Commission* v. *United States Realty & Improvement Company,* 310 U. S. 434 (1940), and its own decision in *Mecca Temple, etc.* v. *Darrock,* 142 F. 2d 869 (C. A. 2, 1940) cert. denied 323 U. S. 784, requiring that chapter X jurisdiction shall be entertained only when questions of public interest are involved.

Reasons for Granting the Writ.

Each of the issues presented herein embody questions of bankruptcy law which have not been, but should be settled by this Court.

The issues here presented have not been expressly passed upon by this Court or by any circuit court other than the court sought to be reviewed.

Two sections of the Bankruptcy Act (§§ 128, 129) on the points involved have not previously been construed by this Court.

The decision below nullifies the intent of Congress which prescribed that simple corporations not involved with a public interest may obtain adequate relief under chapter XI.

The circuit court (per Clark, *C. J.*) in another case has indicated that there is still no authoritative ruling on the issue here presented. In the *Mecca Temple* case (cited *supra*) the second circuit commented:

> "Of course, there still is no well-defined answer in the borderline cases to the question as to whether a particular type corporation should be permitted to proceed under Chapter XI."

The decisions below that a subsidiary corporation under § 129 may intervene in the original proceedings less than two hours after the first filing is a novel holding unsupported by any other opinion and is indeed *contra* to the only decision on the subject (See *In re Realty Associates Securities Corporation*, 55 F. Supp. 546 (E. D. N. Y. 1944), which requires notice to interested parties.

With respect to § 128 enacted in 1938 this Court has never construed the language "for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction", and no other circuit court has considered the change. The text writers Collier and Remington are in conflict in their interpretation of this change in the law (R. 327, fol. 327). The district court cites Remington with ap-

proval, but the circuit court omits reference to this authority (201 F. 2d at 359).

The questions are important in the administration of the Bankruptcy Act and should be settled by this Court.

CONCLUSION.

For these reasons it is respectfully submitted that this petition for writ of certiorari should be granted.

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with him on the petition.

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THE LEBLANC CORPORATION (a Maryland corporation), and THE LEBLANC CORPORATION (a Louisiana corporation), Debtors, MILTON F. ROSENTHAL, Trustee, and ALBERT HAILPARN, NELSON P. RABONE, ALBERT H. AHLERS, FRANK R. ATWELL, RICHARD P. PROWELL, MICHAEL HALPERIN, JOSEPH ECKHAUS and MORRIS W. PRIMOFF, constituting the Creditors' Committee,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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April 24, 1953.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

Opinions Below.

The unanimous opinion of the Court of Appeals for the Second Circuit (R. 131-138) is reported in *Capitol Motor Courts et al.* v. *The LeBlanc Corporation et al.*, 201

F. 2d 356. The opinion of the District Court (R. 105-114) is unreported.

Grounds Upon Which Jurisdiction Invoked.

Petitioners seek under 28 U. S. C. §1254(1) a writ of certiorari to review (1) conclusions of fact drawn by the courts below from the facts in the record and (2) one question of law upon which there is no conflict among the Courts of Appeals for the various circuits, and upon which petitioners lost in the District Court and lost in the Court of Appeals by unanimous decision.

Statutes Involved.

Jurisdiction over Chapter X proceedings is provided in §§128 and 129 of the Bankruptcy Act, which are:

> "Sec. 128. If no bankruptcy proceeding is pending, an original petition may be filed with the court in whose territorial jurisdiction the corporation has had its principal place of business or its principal assets for the preceding six months or for a longer portion of the preceding six months than in any other jurisdiction.
>
> "Sec. 129. If a corporation be a subsidiary, an original petition by or against it may be filed either as provided in section 128 of this Act or in the court which has approved the petition by or against its parent corporation."

Statement.

This case arises out of proceedings for reorganization of two corporate debtors under Chapter X of the Bankruptcy Act.

The petitioners for a writ of certiorari herein are 21 creditors having claims in a total stated amount of approxi-

mately $161,000 (R. 90) out of total liabilities in the approximate amount of $4,250,000 when the Chapter X petitions were filed (R. 82). Respondents are the Trustee of the debtors appointed by the District Court for the Southern District of New York, the debtor corporations themselves, and the Creditors' Committee of which Albert Hailparn is chairman and which represents approximately 160 creditors holding claims in the stated amount of approximately $3,500,000 (R. 90).

The two debtors in this Chapter X proceeding are corporations bearing the same name—The LeBlanc Corporation. The parent was organized in the State of Maryland (the "Maryland Debtor"), and the subsidiary was organized in Louisiana (the "Louisiana Debtor") (R. 78, 80). On October 3, 1951, the District Court for the Southern District of New York, acting under Section 128 of the Bankruptcy Act, approved the Chapter X petition filed by the Maryland Debtor. Thereafter the same court, acting under Section 129 of the Bankruptcy Act, approved the Chapter X petition filed by the Louisiana Debtor (R. 89).

The Trustee was appointed on October 5, 1951 (R. 47-52), and has been engaged ever since in carrying on the business of the debtors under the orders of the District Court (R. 89-90). The time taken by petitioners in contesting jurisdiction has aggravated the confusion and prejudice to all creditors and stockholders which would result from a decision against the jurisdiction of the District Court, coming as it would now after more than a year and a half of Chapter X administration.*

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* Petitioners filed their notice of appeal from the orders of the District Court on April 16, 1952 (R. 119). The record on appeal to the Court of Appeals was not submitted by them until September 5, 1952 (R. 127). The judgment of the Court of Appeals was filed on January 12, 1953 (R. 141), and the last day on which the petition to this Court could be filed was April 13, 1953. Respondents are advised that the Petition for the Writ was filed in this Court on April 8, 1953.

The facts of the transactions and events preceding the filing of the two Chapter X petitions are complex. They are well summarized in the opinion of the District Court (R. 105-109), and in the opinion of the Court of Appeals (R. 132-134).

For the purpose of disposing of the certiorari petition to this Court, the most important facts, all referred to in the opinions below, are:

(1) All the property of the Maryland Debtor was in the Southern District of New York. Contrary to the statements in the first paragraph on page 6 of the Petition for the Writ, this property consisted of bank accounts averaging about $95,000 (photoprint opposite R. 96), all the outstanding capital stock of the Louisiana Debtor, corporate records and correspondence, and accounts receivable which were pledged to Standard Factors Corporation in the Southern District (R. 85). Although the Maryland Debtor was the assignee of bank accounts in Lafayette, Louisiana, such accounts consistently showed a negative balance or overdraft, and therefore constituted liabilities rather than assets (R. 84, and photoprint opposite R. 96).*

(2) The Maryland Debtor engaged in important business transactions within the Southern District of New York and not elsewhere (R. 79-83, 90). Since a corporation's principal place of business is where its principal business is transacted, "the principal place of business" of the Maryland Debtor within Section 128 of the Bankruptcy Act could only be in the Southern District of New York.

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* Apart from the fact that no separate books of account were opened for the Maryland Debtor, the paragraph of the Petition referred to above, so important to the petitioners' case, is without support in the record.

(3) The Louisiana Debtor is now the subsidiary of the Maryland Debtor, and was the subsidiary of the Maryland Debtor at the date and before the date of the filing of the petitions for reorganization under Chapter X. Neither debtor was organized as a vehicle for Chapter X reorganization in the Southern District of New York (R. 81, 90, 108, 112).

(4) The Debtors' petitions had to be filed under Chapter X rather than Chapter XI of the Bankruptcy Act because (a) it was and is essential on the facts here that a disinterested Trustee be appointed to protect the interests of creditors (R. 111); (b) those in control of the debtors immediately before the Chapter X petitions were filed were so inadequately informed they could not at that time have complied with the Chapter XI requirement that a proposed arrangement with creditors be filed along with a petition (R. 91, 110-111); (c) there were secured creditors whose large claims (R. 82) the Court would have no power to deal with under Chapter XI (R. 111-112); and (d) on the special facts here it was and is essential that both debtors be reorganized in the same court and this would have been impossible under Chapter XI, which has no counterpart of Section 129 of the Bankruptcy Act. (R. 91, 111).*

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* In *Securities and Exchange Commission* v. *United States Realty & Improvement Co.*, 310 U. S. 434 (cited p. 8 of Petition for Writ of Certiorari herein), it was held that the corporation there involved should be reorganized under Chapter X rather than under Chapter XI. Many of the factors upon which this Court rested its decision in that case are also present here. Contrary to petitioners' suggestion, that case does *not* hold, expressly or by implication, that the absence of one of those many factors—numerous and widely scattered stockholders—requires reorganization under Chapter XI rather than under Chapter X.

Questions Presented.

Four questions were unsuccessfully argued by the petitioners to the District Court and to the Court of Appeals. In the petition to this Court, those questions have been fragmentized and coupled with incomplete and misleading statements of fact, but no new questions have been presented.

As paraphrased from the opinion of the Court of Appeals (R. 134), the questions considered and decided below were:

1. Do the facts show that the legal requirements were observed in the District Court's approval of the petitions by the two debtors for reorganization under Chapter X of the Bankruptcy Act? (Question 5, Petition for Writ, p. 3).

2. Do the facts show why adequate relief could not be obtained under Chapter XI through a petition for an arrangement rather than under Chapter X through a petition for reorganization? (Questions 1 and 2, Petition for Writ, pp. 2-3).

3. Do the facts show that the petitions for reorganization under Chapter X were filed in good faith? (Questions 3, 4 and 6, Petition for Writ, p. 3).

4. Did the District Court have power to act in view of the fact that the Maryland Debtor had not been in business for more than three months? (Question 7, Petition for Writ, p. 4).

Argument.

Both the District Court and unanimous Court of Appeals for the Second Circuit answered these questions in the

affirmative. There is no basis in the record, in the Bankruptcy Act or the cases decided thereunder upon which the questions could have been answered in the negative.

As is made apparent by the opinions of the Court of Appeals and the District Court, the answers to the questions presented by this case are relatively simple ones once the somewhat complex facts unique to this case are understood. In that respect, we therefore rely upon the opinions below and upon the Statement in this brief.

The sole question of law which is not dependent for resolution upon the facts unique to this case is abundantly clear. That question is whether the provisions of Section 128 of the Bankruptcy Act which confers Chapter X jurisdiction upon the court in whose territorial jurisdiction a corporation has had its principal place of business "for *a* longer portion of the preceding six months than in any other jurisdiction" is to be construed as if it read "for *the* longer portion of the preceding six months" and as if the words "than in any other jurisdiction" were meaningless.

This construction of Section 128 is argued for by petitioners. If accepted, it would mean that no court can have jurisdiction under Chapter X over any corporation which, like the Maryland Debtor, has been in business for less than six months.

We respectfully submit that this construction of Section 128, which both the District Court and the Court of Appeals rejected, is patently wrong and does violence to the plain meaning of the words used by Congress.

See: *Fada of New York, Inc.* v. *Organization Service Co., Inc.*, 125 F. 2d 120 (2d Cir. 1942).

Conclusion.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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April 24, 1953.